

MODEL ELIGIBLE DOMESTIC RELATIONS ORDER
FOR MEMBERS AND FORMER MEMBERS OF THE
STATE RETIREMENT AND PENSION SYSTEM
OF MARYLAND

**Important: This Model is presented
for informational purposes only, and
should not be taken as legal advice.**

State Retirement Agency of Maryland
November 29, 2004

Introduction

This Model Domestic Relations Order (“Model”) contains model language for attorneys who are involved in the preparation of a Domestic Relations Order (“DRO”) that addresses the plan benefits of a member or former member of the State Retirement and Pension System of Maryland (“MSRPS”).

The Board of Trustees for the MSRPS has revised its regulations governing the review and administration of DROs, effective October 11, 2004. The purpose of the revised regulations and this Model is to make it easier for parties in a divorce to ensure that a DRO will be eligible for processing by the Agency. **The Model and this introduction are presented for informational purposes only, and should not be taken as legal advice.** The Agency does not advise participants, former spouses (“alternate payee”), or attorneys about how to draft a DRO that best suits the wishes and intentions of the parties. This is the task of the parties and attorneys involved. The Agency’s role is ministerial. The requirements that must be satisfied for the Agency to honor a DRO are set out in Division II of the State Personnel and Pensions Article (“SPP”), Md. Code Ann., and in COMAR 22.01.03.

The following points should be considered:

1. **Exemption from ERISA.** As a government-sponsored plan, the MSRPS is exempt from Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). A DRO that makes general reference to ERISA, the Internal Revenue Code, or is labeled as a Qualified Domestic Relations Order or “QDRO” will not be accepted. Unlike ERISA plans, in the absence of an appropriate court order, a participant may take any action with regard to his or her benefits without any notice or consent. Additionally, an alternate payee’s rights are entirely derivative of the participant’s rights. To that end, an alternate payee may not elect beneficiaries or choose retirement options.
2. **Plan Benefit.** A DRO must clearly identify the types of plan benefits that are to be divided by the court. The amended regulations and this Model provide some detail as to what constitutes a “plan benefit,” and are designed to give the most commonly used meanings to words most often encountered in DROs. However, with more than 11 separate systems and subsystems in the MSRPS, the regulations and this Model cannot address each type of benefit that may be available to a participant in a particular system. Before drafting, attorneys are advised to consult a benefits handbook or contact a retirement counselor at the Agency to acquaint themselves with the various benefits that are available under the member’s plan within the MSRPS. Retirement counselors are available by telephone at (410) 625-5555, or (800) 492-5909. Benefits

information, including the benefits handbook for several of the systems, is also available on the MSRPS website, www.sra.state.md.us. A few points should be considered:

- a. ***Allowance.*** Unless otherwise specified, the term “allowance” is defined by regulation to include the following: service retirement allowance, disability retirement allowance, vested allowance, and cost of living adjustments. Additionally, except in situations where the statute requires payment exclusively to a surviving spouse, minor child, or dependent parent, the term allowance includes a lump sum payment of the amount accrued in the Deferred Retirement Option Program on termination of participation.
- b. ***Pre-retirement death benefits.*** Most systems within the MSRPS provide both “active service death benefits,” for members who die during employment, and a death benefit for former vested members which consists of a return of member contributions. Some systems within the MSRPS, such as the State Police Retirement System, Law Enforcement Officers’ Pension System, and the Judges’ Retirement System, provide pre-retirement death benefits to a participant’s current surviving spouse, minor child and/or dependent parent rather than to a designated beneficiary. Because such survivor benefits are payable by virtue of the surviving spouse’s or minor child/dependent parent’s status, no portion of these benefits can be assigned to an alternate payee under a DRO. However, pre-retirement death benefits may be available to a designated beneficiary if the participant is not married or survived by minor children and/or a dependent parent at the time of death.
3. ***Marital Share Formula.*** Under the Board of Trustees’ regulations, the Alternate Payee’s share of a plan benefit may be expressed as a fixed dollar amount, a fixed percentage, or a formula that *clearly divides* a plan benefit. The regulations provide criteria for the acceptance of a formula to divide a plan benefit. Typically, parties use the following formula to divide the plan benefits earned during a marriage:

$$\frac{\text{Total months of marriage during which participant accrued service credit}}{\text{Total months of Service credit}} = \text{The "Marital Share Fraction"}$$

$$\text{Alternate Payee's share} = \text{Marital Share Fraction} \times \underline{\hspace{1cm}}\%$$

This formula is described in the Model as follows:

The alternate payee's share of the participant's allowance is declared to be the "marital share fraction" multiplied by ____%. The "marital share fraction" is the following fraction: the numerator is the total number of months of the parties' marriage during which the PARTICIPANT accumulated service credit in the MSRPS, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT'S service credit in the MSRPS.

4. **Post-Retirement Survivor Benefits.** Some plans within the MSRPS permit a member, at retirement, to select a reduced allowance in order to provide post-retirement survivor benefits to a designated beneficiary. These are optional benefits that will flow to a designated beneficiary following the death of a retiree. Several points should be considered:
 - a. ***Description of options.*** In most systems within the MSRPS, six different types of optional post-retirement survivor benefits are available and are described in the statute at SPP §21-403.
 - b. ***One beneficiary.*** Four of the options provide for monthly payments to a designated beneficiary for life. For such "optional survivor allowances," only *one* individual may be designated to be the beneficiary. SPP §21-402(b). Thus, if the parties wish to designate the alternate payee as the beneficiary of an optional survivor allowance, the DRO must provide that the participant shall designate and maintain the alternate payee as the sole beneficiary. It should be noted that such an action will preclude the participant from designating a different beneficiary (such as a current spouse) at the time of retirement.
 - c. ***Spousal Survivor Benefits for State Police Retirement System, Law Enforcement Officers' Pension System, and Judges' Retirement System.*** Some plans, such as the State Police Retirement System, Law Enforcement Officers' Pension System, and the Judges' Retirement System, provide post-retirement survivor benefits to participant's current surviving spouse, minor child and/or dependent parent rather than to a designated beneficiary. Because such survivor benefits are payable by virtue of the surviving spouse's or minor child/dependent parent's status, no portion of these benefits can be assigned to an alternate payee under a DRO. However, a participant may have the option to select a retirement option and designate a beneficiary if the participant is not married at the time of retirement.

IMPORTANT INSTRUCTIONS FOR USING THE MODEL

This model provides a basic format for use in preparing a DRO. Various alternatives for dividing benefits are offered. **THIS MODEL IS NOT INTENDED AS A CHECK-OFF FORM. ANY ALTERNATIVES THAT ARE NOT SELECTED MUST BE REMOVED FROM THE DRO BEFORE SUBMISSION.** To prevent confusion in the administration of a DRO, the Agency will not accept a DRO that contains options that are not chosen by the parties.

Plaintiff
v.

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* _____
* Case No. _____

* * * * *

ELIGIBLE DOMESTIC RELATIONS ORDER

Upon consideration of the Judgment of Absolute Divorce entered in the above-captioned case, it is this ____ day of _____, _____, ORDERED,

1. This Order relates to the disposition of certain benefits of [(name of PARTICIPANT)] to be provided by the [name of individual system] (“participant’s plan”), which is part of the STATE RETIREMENT AND PENSION SYSTEM OF MARYLAND (“MSRPS”).
2. The parties hereto were married on [(date of marriage)], and this Order is entered incident to a final Judgment of Absolute Divorce entered on [(date of divorce)].

3. The PARTICIPANT is identified as follows:

Name: [name of PARTICIPANT]
Address: [address]
Date of Birth: [date of birth]
Social Security No: [social security number, or state that “the PARTICIPANT’S social security number is provided in the letter transmitting this Order to the MSRPS.”]

4. The ALTERNATE PAYEE is identified as follows:

Name: [name of ALTERNATE PAYEE]
Address: [address]
Date of Birth: [date of birth]
Social Security No: [social security number, or state that “the ALTERNATE PAYEE’S social security number is provided in the letter transmitting this Order to the MSRPS.”]

5. The administrator of the MSRPS is:

State Retirement Agency of Maryland (“AGENCY”)
120 East Baltimore Street
Baltimore, Maryland 21202
Attn: Eligible Domestic Relations Orders

6. To accommodate the marital property distribution between the parties, in accordance with Md. Code Ann. Family Law Article, §§ 8-202 and 8-205 and

COMAR 22.01.03, IT IS HEREBY ORDERED AS FOLLOWS:

A. **Allowance.** The ALTERNATE PAYEE’S share of the PARTICIPANT’S allowance is declared to be

(Choose Alternative i., ii. or iii.)

i. [\$ _____ dollar amount]

ii. [_____ percentage]

iii. [percentage (%)] multiplied by the “marital share fraction.” The “marital share fraction” is the following fraction: the numerator is the total number of months of the parties’ marriage during which the PARTICIPANT accumulated service credit in the MSRPS, up until and including the date of the Judgment of Divorce, and the denominator is the total number of months of the PARTICIPANT’S service credit in the MSRPS.

B. Refund of accumulated contributions; transfer refund. If the PARTICIPANT elects to receive any refund of accumulated contributions, a transfer refund, or any other lump sum distribution of a Plan Benefit not addressed elsewhere herein, the ALTERNATE PAYEE’S share is declared to be:

(Choose Alternative i., ii. or iii.)

- i. [\$ dollar amount]
- ii. [percentage]
- iii. [percentage (%)] multiplied by the “marital share fraction,” as defined in paragraph 6A.

C. Pre-retirement death benefit.

(Choose Alternative i., ii. or iii.)

- i. No share of any pre-retirement death benefit payable with respect to the PARTICIPANT is assigned to the ALTERNATE PAYEE under the terms of this Order.

- ii. The PARTICIPANT shall designate and maintain the ALTERNATE PAYEE as the sole primary beneficiary of the pre-retirement death benefit, for the ALTERNATE PAYEE'S lifetime.
- iii. If a pre-retirement death benefit is payable with respect to the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE'S share of the pre-retirement death benefit is declared to be:

(If Alternative iii. is selected, also choose Alternative (1), (2) or (3).)

- (1) [\$_____ dollar amount]
- (2) [_____ percentage]
- (3) [_____ percentage (%)] multiplied by the "marital share fraction," as defined in paragraph 6A.

D. Post-retirement survivor benefit.

(Choose Alternative i., ii. or iii.)

- i. At retirement, if permitted by the terms of the participant's plan, the PARTICIPANT shall select an optional form of allowance providing for a post-retirement survivor benefit, and shall designate the ALTERNATE PAYEE as the sole primary beneficiary, for the ALTERNATE PAYEE'S lifetime.

(If Alternative i. is selected, also choose Alternative (1) or (2).)

- (1) The PARTICIPANT shall select Option Number [_____].

(2) The PARTICIPANT shall select any Optional form of allowance, permitted by the terms of the participant's plan, that provides for a post-retirement survivor benefit (either annuity or lump-sum benefit, if applicable.)

- ii. At retirement, the PARTICIPANT may select an optional form of allowance, if and as permitted by the terms of the MSRPS, and may designate an individual other than the ALTERNATE PAYEE as the beneficiary of any post-retirement survivor benefit.

(If Alternative ii. is selected, also choose Alternative (1a) or (1b).)

(1a) If the PARTICIPANT selects an optional form of allowance at retirement, the PARTICIPANT shall select Option Number .

(1b) The PARTICIPANT may select any optional form of allowance permitted by the terms of the participant's plan that provides for a post-retirement survivor benefit (either annuity or lump-sum benefit, if applicable.)

(In addition, if Alternative ii. is selected, choose Alternative (2a) or (2b).)

(2a) No share of any post-retirement survivor benefit is assigned to the ALTERNATE PAYEE under the terms of this Order.

(2b) If a post-retirement survivor benefit is payable upon the death of the PARTICIPANT, and if the ALTERNATE PAYEE survives the PARTICIPANT, the ALTERNATE PAYEE'S share of the post-

retirement survivor benefit payable with respect to the

PARTICIPANT is declared to be:

(If Alternative ii.(2b) is selected, also choose Alternative (i), (ii) or (iii).)

- (i) [\$_____ dollar amount]
- (ii) [_____ percentage]
- (iii) [_____ percentage (%)] multiplied by the “marital share fraction,” as defined in paragraph 6A.

iii. At retirement, the PARTICIPANT may not select an optional form of allowance that provides for a post-retirement survivor benefit.

E. **Method and timing of payment; restrictions.** MSRPS is hereby directed to make payments of the ALTERNATE PAYEE’S share directly to the ALTERNATE PAYEE, if, when, and as payments of PARTICIPANT’S Plan Benefit are made to PARTICIPANT, in any form selected by the PARTICIPANT that is permitted by the PARTICIPANT’S plan. The ALTERNATE PAYEE’S share may not exceed the amount of the PARTICIPANT’S plan benefit.

F. **Transfers.** If the PARTICIPANT transfers from the PARTICIPANT’S plan to any other retirement or pension system (“transferee system”) that is administered by the AGENCY and that gives credit for service under the PARTICIPANT’S plan, then this Order shall apply to any benefits provided by such transferee system to the extent that such benefits are payable under the terms of the transferee system. The AGENCY is not liable to make

further payments to the ALTERNATE PAYEE if the PARTICIPANT transfers to another retirement or pension system that is not administered by the AGENCY.

G. Obligations of Alternate Payee. It is the obligation of the ALTERNATE PAYEE to promptly: (a) provide the AGENCY a certified copy of this Order, and modifications or amendments hereto; (b) notify the AGENCY in writing of any change of name or address; and (c) comply with all reasonable requests from the AGENCY for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE.

H. Obligations of Participant – not obligations of MSRPS OR AGENCY. It is the obligation of the PARTICIPANT to promptly: (a) notify the AGENCY in writing of any change of name or address; and (b) comply with all reasonable requests from the AGENCY for information and documentation necessary for processing payment of all or any portion of a PARTICIPANT'S plan benefit to the ALTERNATE PAYEE. Additionally, the PARTICIPANT is responsible for completing and submitting any applications or forms required by the AGENCY to effectuate any provision of this Order, including, but not limited to, any form required by the AGENCY to designate the ALTERNATE PAYEE as beneficiary. If the PARTICIPANT takes any action in contravention of any provision of this Order, including, but not

limited to, this Paragraph 6, the PARTICIPANT shall bear the sole and exclusive liability for such action, and not the MSRPS or the AGENCY.

I. **Tax consequences of payments.** All payments to the ALTERNATE PAYEE by the MSRPS shall be includable in the taxable income of and taxable to the ALTERNATE PAYEE. After-tax contributions shall be allocated to the parties in the same proportion as the total amount of the ALTERNATE PAYEE'S share bears to the PARTICIPANT'S total plan benefit.

J. **No requirement to retire.** No provision of this Order shall be construed to require the PARTICIPANT to retire at any particular age or length of service.

7. This Court retains jurisdiction to amend this Order for the purpose of its acceptance and/or administration by the MSRPS or any transferee retirement system or to effectuate the terms of the parties' Settlement Agreement and/or Judgment of Divorce.

Judge
Circuit Court for _____

Consented as to form:

PARTICIPANT

ALTERNATE PAYEE

Attorney for Participant
[Address and telephone]

Attorney for Alternate Payee
[Address and telephone]

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